

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **July 14, 2008**

Time: 9am

Place: Olmsted Room

Members

(Attendees=x)

Commission Members

xChair, Glen W. Roberts, *Utah Cnty* xDavid M. Lattin, *Salt Lake Cnty*
xCanyon W. Anderson, *Davis Cnty* xGarry M. Goodsell, *Iron Cnty*
xJerry M. Houghton, *Tooele Cnty*

Department Staff

John E. "Mickey" Braun, Jr. xPerri Babalis Darrel Powell xMark Kleinfeld
Ass't Commissioner *AG Legal Counsel* *Dir. Market Conduct* *Admin. Law Judge*

xTammy Greening xSheila Curtis xConnie Nowland xSandra Halladay xJilene Whitby
MC Examiner *MC Examine* *MC Examiner* *MC Examiner* *PIO/Recorder*

Public

James Walton Clayton Hansen Jeff Wiener David Moore

Minutes

I. **Welcome and Introductions** / Glen Roberts, Chair

Glen began the meeting at 9:05a.m.

II. **Adoption of Minutes of Previous Meeting**

Garry suggested changes to Section 6, bullets 5, 6 and 14:

- 5th bullet: "Building Plans. Not allowed list."
- 6th bullet: "Printed labels. [Okay]"
- 14th bullet: The last line should read:
"It is [an] unlawful [~~inducement to make a loan to an affiliate of a title agency~~]for
an affiliate of a title agency to make a loan to a client."

Garry made a **motion** to accept the minutes with these changes, Jerry seconded it and the vote was unanimous in favor of the motion.

III. **Review & Concur with Licensee Report**

Garry made a **motion** to approve June's licensing report, David seconded it and the vote was unanimous.

IV. **Number of Cases Open & Closed**

Commission members noted that there were more closed than open investigations. This is due to the closure of annual report investigations. Jerry asked how many did not file an annual report because the agency had closed their doors. Sheila said none. Tammy said some of those who had no business in 2007 thought they did not need to report. One surrendered his license and moved.

The department receives few title consumer complaints.

V. **Review & Concur with Enforcement Case Report**

Mark Kleinfeld reported on three Stip and Orders.

#1 **Steven D. Brantley** –Violations of 31A-23a-107 regarding character requirements involving seven real estate transactions where respondent created a HUDI showing the buyer would bring in cash at the closing. No cash was exchanged. The department recommended revoking the agent's license. Commission members raised concern that there was not enough

information to concur. David made the **motion** to concur, Garry seconded it and the vote was unanimous. The Commission wanted to know if action was being taken against the agency. No One knew.

#2 Gifford Steven Baugh – Advertising violations of Rule R590-153-6.B(2). Respondent paid to advertise the agency in a REMax West/Cash Homes publication, which promotes sales of real estate brokerages. The department recommended a \$500 Forfeiture. Garry asked why the violation was not against the agency? Garry made a **motion** to approve, Canyon seconded it and the vote was unanimous.

3rd Premier Title Insurance Agency, Inc. – Marketing violation of Rule R590-153-6.E. Respondent distributed prescription containers with a label identifying the respondent and its marketing representative with candy in it to its clients. The department recommended a forfeiture of \$500. **Motion** by Jerry to approve, seconded by Garry and the vote was unanimous.

Glen asked if the Commission could get more information on Stip and Orders regarding previous violations, how many people were affected by the violation, etc.? **Mark said he would talk with Gale about it.** Jeff expressed concern that this forum only provides one side of the issue. Mark noted that when a Stip and Order is filed it is after the respondent has agreed to the order and declined to have a full hearing. Perri said that if the Commission wanted more evidence they needed to conduct a hearing. **The Commission asked to see the matrix at the next meeting.** It will have to be shown in a closed Executive meeting.

IV. VI. Old Business

- **Review Comments for R592-7, 8 & 9 / Mickey**
 - No written comments were received on Rule R592-7. Canyon made a **motion** to put the rule into effect today, Jerry seconded it and the vote was unanimous.
 - One comment was received on Rule R592-8 questioning why the rule was necessary. It is required by legislation. Canyon made a **motion** to put the rule into effect today, David seconded it and the vote was unanimous.
 - No comments were received on Rule R592-9. The rule will bring in \$350,000 from title agencies for the Title Insurance Recovery, Education and Research Fund as required by legislation. Canyon made the **motion** to put the rule into effect today, Jerry seconded it and the vote was unanimous.
- **Review Changes to R590-153/R592-6 Unfair Inducement / Perri**
 - Garry (6) Is it appropriate to refer an illegal flip transaction? Period should be placed after “parcel of property.” The way it is defined it can be a legal or an illegal flip. Jeff suggested defining “Transaction” and not “Flip.” Each lender defines it differently. Sheila thought there needed to be more clarification. Glen suggested pulling (6) out of definitions and putting it at the end of 6.4.(5). Delete “holding for resale” and add, “a series of real estate transactions for the same parcel of property.”
 - Add a new definition in 6.(3) for “Title insurance business means the business of title insurance and the conducting of escrow.”
 - Jeff didn't think 6.4.(5) needed the wording “due and payable.” After discussion the Commission decided to leave it in.
 - Perri: In 6.2. suggested deleting “Title and Escrow” in the second line. Unnecessary.
 - Line 170, Subsection 6.4.(9) is okay.
 - Line 176, Subsection 6.4.(10) requires a wall and another door. Services cannot be shared. The businesses must appear to be separate. Brad noted that Subsections 11 and others clarify the type of sharing that can and can't be done.
 - Canyon suggested changing the heading of Section 5. to comply with the change in 5.(9).
 - Make changes in numbering.
 - Subsection 6.4.(18) delete the wording after “mortgage leads for loans.”

- 6.1. Delete the word "licensee" and add agency, producer and insurer. Glen asked Perri to use these same terms throughout the rule. See 6.4.(20) and (21).
- 6.4.(24) don't cap "Internet."
- Don't start 6.5.(1)(a) and (b) with caps.
- Canyon made a **motion** to send R590-153 to rulemaking after **Perri makes the before mentioned changes**, Garry seconded it and the vote was unanimous.
- **Minimum Escrow Fee Rule Amendments (R592-3 & 4) / Mickey**
 - **Amendments are pending Mickey's return from vacation.**
 - Some have asked why there should be a fee for the lower tier? Because there are a lot of losses in the lower tier. Glen said the lower fee for lower tier was needed for first time homebuyers, not homebuilders and developers. Garry said the fee needed to be enough to cover costs. Canyon said the doc prep fee to buy a car was \$299, more than the proposed fee for the first level. The tier fees are to be sure escrow complies with the code requirement to charge fees to cover costs of producers and agencies.
 - Garry thought that title agency fees needed to be lowered and escrow fees increased. Glen agreed. David Moore asked how a rate could be developed that would be fair to all regions?
 - Sheila said that next year the annual fees would be filed electronically. It will be easier to flag and review lower escrow fees.
 - Canyon read a letter from an agent that wanted a closing fee of \$250 to more accurately reflect actual costs due to inflation etc. Jerry noted that profitability is more due to volume than amount of fee.
 - Glen called for a vote for a minimum escrow fee. Four voted for it.
 - Garry suggested that they needed to consider the purpose of the Commission. Is it to keep title agencies in business? Dave asked if the market shouldn't determine who stays in business. He did not think it was up to the commission to do so.
 - Glen suggested having tiers at:
 - \$0 - \$180,000 for \$150
 - \$180,000 - 300,000 for \$250 per side.
 - \$300,000 to \$500,000 for \$300 per side.
 - \$500,000 and above is at least \$350 per side.
 - Motion by Glen to send this to the department to write a rule.
 - David M. asked if it wouldn't be better and easier to require audited annual financial statements to make sure agencies are profitable?
- **Email from Real Estate Division / Mickey**
Pending Mickey's return.

VII. New Business

- **Trust Accounts and Bounced Checks**
Glen will see if he can get the wording from the Bar regarding this issue.
- **Coldwell Banker Disbursement Procedure / Glen**
Coldwell Banker is accepting split checks from other than title agents, which is a violation of 61-2-10. Real estate has not notified Coldwell that this is a violation. Glen wanted the department to issue a bulletin stating that this is a violation. Since the violation is not with the insurance code **Sheila will have to check with Neal or Perri to see if the department can issue a bulletin.**
- **Insurance Department Corrective Action Policy / Mickey**
Pending Mickey's return.
- **Selection of a new Commission Chair**
Each Commission member wrote their selection on a piece of paper, folded it and gave to Jilene to count. The results were a tie between David and Canyon. David withdrew

himself since he felt the chair should be a member of the title industry. Canyon accepted the chairmanship.

VIII. **Other Business** from Committee Members

IX. **Adjourned:** 1:15p.m.

X. **Next Meeting** Aug 11, 2008, 9a.m.

2008 Meeting

Aug 11, Olmsted Rm

Sept 8, Olmsted Rm

Oct 8, Olmsted Rm

Nov 10, Olmsted Rm

Dec 8, Olmsted Rm